IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35661

STATE OF IDAHO,	)	**2010 Unpublished Opinion No. 318**
	)	
Plaintiff-Respondent,	)	**Filed: January 22, 2010**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
CARL D. PATTERSON,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bear Lake County. Hon. Ronald E. Bush, District Judge.

Judgment of conviction and concurrent unified sentences of twenty years with five years determinate for two counts of lewd conduct with a child under sixteen, affirmed.

John C. Souza, PLLC, Pocatello, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Elizabeth Koeckeritz, Deputy Attorney General, Boise, for respondent.

GRATTON, Judge

Carl D. Patterson pled guilty to two counts of lewd conduct with a child under sixteen, Idaho Code § 18-1508, and was sentenced to a unified term of twenty years with five years determinate on both counts to be served concurrently. We affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Patterson was charged with seventeen counts of lewd conduct with a child under sixteen years and two counts of sexual battery, one against a child under sixteen and another against a child under seventeen. These charges stemmed from allegations that he molested his three stepdaughters, C.S., S.S., and G.V., from 1996 to 2005. As part of a plea agreement, Patterson pled guilty to two counts of lewd conduct with a child under sixteen years, one in 1997 against C.S and one in 2002 against S.S. He did not plead guilty to molesting G.V. In return, the State dismissed the other counts. At sentencing, the district court received a presentence report which

included information regarding Patterson's physical abuse of his family and other lewd conduct. The court heard and, in part, granted Patterson's multiple objections to the report before sentencing. Patterson appeals contending that the district court improperly considered evidence of misconduct at sentencing unrelated to the charges to which he pled guilty and that the district court abused its sentencing discretion by imposing an excessive sentence.

II.
ANALYSIS

A. Consideration of Evidence of Other Misconduct at Sentencing

Patterson argues that the district court erred in considering, at sentencing, misconduct other than that to which he pled guilty. The State contends that the express terms of the valid plea agreement, as well as the doctrine of invited error, preclude Patterson from pursuing this claim on appeal. Alternatively, the State contends that the district court properly considered the information relating to issues outside of the two counts to which Patterson pled guilty. The State's position is well taken.

Patterson claims that the sentencing court improperly considered information relating to alleged abuse of his stepdaughters other than that to which he pled guilty, including information and a statement from G.V.[1] Prior to entry of the plea agreement, the State filed a notice, pursuant to Idaho Rule of Evidence 404(b), that it intended to introduce at trial evidence of other crimes, wrongs or acts, specifically relating to events, consistent with the preliminary hearing testimony, involving the stepdaughters. Thereafter, the parties dealt with the introduction of the same evidence for purposes of sentencing in the plea agreement as follows:

> 8. The State and Defendant further agree that the State may present and the court may consider other acts of criminal sexual misconduct by the Defendant against Defendant's stepchildren namely, C.S., G.V., S.S., as more fully set forth in the preliminary hearing in this case. The Defendant may argue that the Court should not base the sentence on any other acts referenced in this paragraph.

Patterson now contends that it was improper for the court to consider the information he agreed could be considered. As noted, the State contends that Patterson has waived his right to

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[1] On appeal, Patterson argues that the district court should not have considered a victim impact statement from G.V. However, the sentencing court granted Patterson's objection and did not consider this statement.

appeal this issue and/or invited any error by agreeing that the court could consider the information at sentencing. The doctrine of invited error applies to estop a party from asserting an error when his or her own conduct induces the commission of the error. *State v. Atkinson*, 124 Idaho 816, 819, 864 P.2d 654, 657 (Ct. App. 1993). One may not complain of errors one has consented to or acquiesced in. *State v. Caudill*, 109 Idaho 222, 226, 706 P.2d 456, 460 (1985); *State v. Lee*, 131 Idaho 600, 605, 961 P.2d 1203, 1208 (Ct. App. 1998). In short, invited errors are not reversible. *State v. Gittins*, 129 Idaho 54, 58, 921 P.2d 754, 758 (Ct. App. 1996). This doctrine applies to sentencing decisions as well as rulings made during trial. *State v. Griffith*, 110 Idaho 613, 614, 716 P.2d 1385, 1386 (Ct. App. 1986).

The challenged information was presented to the sentencing court in the presentence report. The State correctly contends that the district court properly considered the information and applied its discretion consistent with Idaho Criminal Rule 32(e)(1).

> The presentence report may include information of a hearsay nature where the presentence investigator believes that the information is reliable, and the court may consider such information. In the trial judge's discretion, the judge may consider material contained in the presentence report which would have been inadmissible under the rules of evidence applicable at a trial. However, while not all information in a presentence report need be in the form of sworn testimony and be admissible in trial, conjecture and speculation should not be included in the presentence report.

I.C.R. 32(e)(1). At sentencing the court "may consider a broad spectrum of information." *State v. Martin*, 142 Idaho 58, 60, 122 P.3d 317, 319 (Ct. App. 2005). The Idaho Rules of Evidence do not apply in sentencing proceedings. I.R.E. 101(e)(3).[2] While the court may consider hearsay information, the court should not consider information with no reasonable basis to deem it reliable. *State v. Mauro*, 121 Idaho 178, 183, 824 P.2d 109, 114 (1991). In addition, the defendant must be afforded an opportunity to object or rebut the evidence of his misconduct. I.C.R. 32(g)(1).

Contrary to Patterson's argument, a sentencing court may consider evidence of other uncharged criminal conduct. *State v. Kohoutek*, 101 Idaho 698, 699, 619 P.2d 1151, 1152 (1980); *State v. Campbell*, 123 Idaho 922, 926, 854 P.2d 265, 269 (Ct. App. 1993). In *Campbell*,

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[2] Thus, Patterson's argument that I.R.E. 404(b) should have been applied to prevent consideration of the challenged information at sentencing is without merit.

the defendant pled guilty to lewd conduct and rape in exchange for the dismissal of four other counts of sexual misconduct. *Id.* at 924, 854 P.2d at 267. While information from anonymous sources was struck from the presentence report, the report included statements from victims to investigators about uncharged sexual misconduct. *Id*. at 927, 854 P.2d at 270. The defendant, who had not pled guilty to engaging in acts with some of these victims, was given an opportunity to object and rebut the evidence. *Id*. This Court found that the sentencing court properly considered the information as probative of the defendant's character and the seriousness of his offenses. *Id*.

The record reveals that Patterson was given an opportunity to, and did in fact, object to the evidence of physical abuse and other lewd conduct in the presentence report and offer rebuttal evidence. The district court agreed with several of his objections and otherwise made notation of the offered corrections or objections to the presentence report. The district court provided adequate opportunity to Patterson to object to the information and present rebuttal and properly exercised its discretion in consideration of the information provided.[3]

B. Excessive Sentence

Patterson contends that the district court abused its discretion by imposing an excessive sentence. An appellate review of a sentence is based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown,* 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case." *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Where an appellant contends that the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard

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[3] While Patterson has argued, in the context of I.R.E. 404(b), that the probative value of the information was outweighed by its prejudicial effect, he has not claimed on appeal that the information was unreliable or that its consideration was otherwise an abuse of the court's discretion.

for the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

III.

CONCLUSION

The district court did not err at sentencing in considering evidence of other misconduct. The district court did not abuse its discretion in imposing sentence. Patterson's judgment of conviction and sentences are affirmed.

Chief Judge LANSING and Judge MELANSON, **CONCUR.**